

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6706 of 1997

CHITRAKUT TRAVELS

Versus

COMMISSIONER/DIRECTOR OF TRANSPORT

Appearance:

MR HR PRAJAPATI for Petitioner

Ms KN VALIKARIMWALA, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of Order: 17/07/98

ORAL ORDER

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated June 16, 1997 passed by respondent no.1 refusing to admit the declaration regarding non-user of the vehicle or to certify the period of non-user of the vehicle on the ground that the petitioner failed to establish that non-user of the vehicle during the relevant period was beyond the control of the petitioner.

2. The petitioner is the registered owner of a passenger bus bearing registration no. GT-3-T-9705 and is registered in the Office of respondent no.2. On June 1, 1995, petitioner filled in form no. NT before the competent authority and declared that it did not want to use the vehicle in view of family dispute and that the vehicle was to be sold away. It may be mentioned that this declaration was filed under Rule-5 of the Bombay Motor Vehicles Tax Rules, 1959. The competent officer visited the place where the vehicle was parked and after verification, prepared a report and submitted it before respondent no.2. Thereafter the petitioner made representation dated April 10, 1997 before respondent no.2 and requested that non-user of the vehicle for a period from June 1, 1995 to March 31, 1996 be approved. Respondent no.2 granted the said representation in part

and approved the non-user of the vehicle for a period from July 1, 1995 to September 31, 1995. Respondent no.2 had no jurisdiction to approve non-user of the vehicle for a period of more than three months and therefore, he referred the matter to respondent no.1 for his consideration. Respondent no.1 rejected the representation made by the petitioner vide order dated June 16, 1997 on the ground that the petitioner failed to establish that non-user of the vehicle for the concerned period was beyond its control. The order passed by respondent no.2 is produced by the petitioner at Annexure-D to the petition, which has given rise to present petition. This order is challenged by the petitioner on several grounds.

3. Mr. B.R.Trivedi, Deputy Director of Transport, Gujarat State, Ahmedabads has filed reply affidavit controverting the averments made in the petition.

4. I have heard the learned Counsel appearing for the parties.

5. In my view, the impugned order will have to be set aside in view of the decision rendered in the case of KAUSHIK K.PATEL AND ANOTHER vs. STATE OF GUJARAT AND OTHERS, SPECIAL CIVIL APPLICATION NO. 10356/96 decided on April 23, 1998 by Division Bench comprising the Chief Justice Mr.K.Shreedharan and Mr.Justice A.R.Dave. In the said case, after examining validity of Rule-5 of the Bombay Motor Vehicles Tax Rules, 1959, the Court has held that the words "for reasons beyond the control of such owner or person" occurring in clause (b) of sub-section (5) of Section 3A of the Bombay Vehicles Tax Act, 1958 as amended by Act no.3 of 1992, is struck down as being beyond the legislative competence of the State Legislature.

6. As the phrase "for reasons beyond the control of such owner or person" is struck down as being beyond the legislative competence of the State Legislature, I am of the view that the Joint Director of Transport, Gujarat State, Ahmedabad was not justified in rejecting the application submitted by the petitioner on the ground that the petitioner had failed to establish that non-user of the vehicle in question was beyond its control. Consequently, the order dated June 30, 1997, which is produced at Annexure-E to the petition, demanding the amount of tax with penalty will have also to be set aside.

For the foregoing reasons, the petition succeeds.

The order dated June 16, 1997 passed by respondent no.1 which is produced at Annexure-D to the petition is hereby quashed and set aside. The order dated June 30, 1997, which is produced at Annexure-E to the petition, is also set aside and quashed. Respondent no.1 is directed to consider the question of grant of necessary approval to the non-user of vehicle belonging to the petitioner on the basis that it is not necessary for the petitioner to establish that non-user of the vehicle was beyond its control. Appropriate decision shall be taken by respondent no.1 as early as possible and preferably within three months from the date of receipt of the writ. Notice is made absolute with no order as to costs.

(J.M.Panchal, J.)
July 17, 1998.

(patel)